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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

AVI AZOULAI, Plaintiff and Appellant, v. JOHNATHON MARK BLOUNT, Defendant and Respondent.	B199552 (Los Angeles County Super. Ct. No. LC069438)

APPEAL from an order of the Superior Court of Los Angeles County. James A. Kaddo, Judge. Affirmed.

Avi Azoulai, in. pro. per., for Plaintiff and Appellant.

Bret D. Lewis for Defendant and Respondent.

The trial court granted a defendant's motion to set aside a default judgment and his underlying default. Plaintiff appeals. We affirm.

FACTS

In September 2004, Ava Azoulai (in pro. per.) filed a complaint against Johnathon Marc Blount. On September 30, 2004, Azoulai filed an amended complaint. Although largely incomprehensible, Azouli's amended complaint suggests that he believed Blount had defrauded him in connection with a music publishing venture, and/or had breached contracts related to the same venture.

On November 12, 2004, Azoulai filed a proof of service which indicated that a registered California process server named "Nancy Banfield" had served Blount with the summons and complaint by substituted service on November 2, 2004. According to Banfield's declaration of service, she had left a copy of the summons and complaint "in the presence of . . . Denise Carrasco, Authorized to Receive Service of Process," at this address: "County Thrift Store 18511 Sherman Way Reseda CA 91335."

On December 22, 2004, Azoulai filed a request for entry of Blount's default. On August 4, 2005, at which time Azoulai was represented by counsel, the trial court entered a default judgment against Blount in the amount of $185,081.

On February 21, 2007, Blount filed a motion to set aside the default judgment and his default on the ground that he "never received" a summons and complaint in Azouli's case, and that he had "no knowledge" of Azoulai's case until January 2007, when money which had been payable to him was, instead, levied by the sheriff's offices pursuant to a writ of execution. Blount explained that he and Azouli had entered business contracts in 2003, but their relationship had quickly soured. According to Blount, he moved from the Los Angeles area to North Carolina in November 2004 (just about the time that he was purportedly served with Azoulai's action). Blount stated that he "never worked, resided or authorized any person on [his] behalf to accept service of any documents at The County Thrift Store located at 18511 Sherman Way, Reseda, CA 91335." Blount also explained that Azoulai had filed another action regarding the same matters, and that he

(Blount) had answered that second action and that he was represented by counsel in that second action.

On March 8, 2007, Azoulai (by his counsel of record) filed an opposition to Blount's motion to set aside the default judgment and his underlying. Generously construed, Azoulai's opposition challenged Blount's credibility vis-à-vis his claim that he had never been served with the summons and complaint in Azoulai's action. In support of his attack on Blount's credibility, Azoulai presented a declaration — dated January 2005 — from Denise Carrasco stating that she "ha[d] been providing mailbox service" to Blount since October 2003. Carrasco's declaration did not indicate that she had authority to accept service of process on behalf of Blount, did not indicate that she had actually received the summons and complaint in Azoulai's action, or that she had delivered the summons and complaint to Blount.

On March 26, 2007, the trial court granted Blount's motion to set aside the default judgment and his underlying default. The trial court's order expressly provides: "[T]here is no evidence showing that Denise Carrasco was the authorized agent for service, nor even that she actually handed [Blount] the summons and complaint. In sum, there is no evidence that [Blount] had actual notice of the existence of [this] lawsuit."

DISCUSSION

Azoulai (in pro. per. on appeal) contends Blount had "no right" to seek relief from the default judgment and his underlying default because he was barred from seeking such relief under the "fugitive disentitlement doctrine." We disagree.

Generally speaking, the fugitive disentitlement doctrine refers to the principle that a person should not be permitted to seek aid and assistance from our courts while, at the same time, he or she is flouting the legal orders and/or processes of our courts. (See, e.g., *Estate of Scott* (1957) 150 Cal.App.2d 590, 592.) The doctrine is equitable in nature, and more commonly seen in criminal cases, but at least one of our state courts has suggested that, given the appropriate circumstances, it may be applicable in a civil context as well. (*Doe v. Superior Court* (1990) 222 Cal.App.3d 1406, 1408-1409.) Be that as it may, we

see insurmountable problems with Azoulai's attempt to invoke the doctrine in his current case.

First, there is nothing in the record on appeal to suggest that the doctrine, and facts to support its equitable application to Blount, were presented to the trial court in the first instance. For this reason alone, it is impossible to assess whether the equities favor or do not favor an application of the doctrine against Blount.

Second, to the extent that Azoulai and Blount have both attempted to present us with print-outs from the dockets in two criminal cases in the Los Angeles Superior Court, we find none of this material to be helpful on appeal.[1] Even assuming that Blount's criminal history was properly and completely presented to our court, which it is not, this would not cause us to question the trial court's decision to grant Blount's motion for relief from the default judgment and default. The trial court granted Blount relief from his default based on the court's factual determination that Blount never received notice of Azoulai's current action. In other words, Blount won and Azoulai lost because the trial court believed the former over the latter. Assuming we were inclined to view the evidence differently (which we are not), an appellate court is not permitted to substitute its assessment of the credibility of witnesses in place of the trial court's assessment of the credibility of witnesses. In short, we are not permitted to find independently that Blount did receive notice of Azoulai's lawsuit. The trial court's factual finding of "no notice" is the beginning and the end of Azoulai's current appeal because none of the authorities cited by Azoulai support his necessarily inherent assertion that a judgment may be entered against a defendant who has never received notice of the action.

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[1] We grant both parties' motions for judicial notice.

DISPOSITION

The order setting aside the default judgment and Blount's default is affirmed. Respondent is awarded its costs on appeal.

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BIGELOW, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.